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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/781,149	02/08/2001	David Charles Lyons	12929.1062US01	7449

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EXAMINER

YEUNG, JAMES C


ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 01/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/781,149	Applicant(s) Lyons et al.	
Examiner James C. Yeung	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Oct 9, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 6, and 9-26 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, and 9-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 11, 12 20) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 U.S.C. § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2 are rejected under 35 U.S.C. 102(3) as being unpatentable over Shimek '743 in view of Davies (U.K. Pat. 1033987, prior art cited by applicant in Paper No. 11).

Shimek '743 discloses the invention substantially as claimed. In particular, Shimek '743 shows in Fig. 2 a gas burner for a fireplace, comprising:

a burner panel (12) defining a top surface and a bottom surface;
a bottom burner member (11A) coupled to the burner panel (12); and
wherein the burner panel (12) defines at least one aperture (24) to provide a gas/air mixture to the top surface of the burner panel (12).

However, Shimek '743 does not disclose that the burner panel comprises a compression molded material.

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Davies teaches the use of a burner panel (27, Fig. 8) comprised of a compression molded material for the purpose of improving the overall production of the burner panel (note page 1, lines 8-13).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the burner panel (12, Fig. 2) of Shimek '743 such that the burner panel comprises a compression molded material such as taught by Davies in order to improve the overall production of the burner panel.

3. Claims 3, 6, 9, and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimek '743 in view of Shimek '464.

Shimek '743 discloses the invention substantially as claimed (note elements 12 and 11A, Fig. 2). However, Shimek '743 does not disclose at least one preformed log.

Shimek '464 teaches the use of a burner panel (24C, Fig. 7) having at least one preformed log (col. 6, line 12) for the purpose of simulating a solid-fuel gas fire.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form a portion of the burner panel '743 into at least one preformed log such as taught by Shimek '464 in order to simulate a solid-fuel gas fire.

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4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over in view of Shimek '743 in view of Shimek '464 as applied to claim 3 above, and further in view of Davies (U.K. Pat. 1033987, prior art cited by applicant in Paper No. 11).

Davies teaches the use of a burner panel (27, Fig. 8) comprised of a compression molded material for the purpose of improving the overall production of the burner panel (note page 1, lines 8-13).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the burner panel (12, Fig. 2) of Shimek '743 such that the burner panel comprises a compression molded material such as taught by Davies in order to improve the overall production of the burner panel.

5. Claims 10-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimek '237 in view of Davies (U.K. Pat. 1033987, prior art cited by applicant in Paper No. 11).

Shimek '237 discloses the invention substantially as claimed. In particular, Shimek '237 shows in Figs. 15-18 a gas burner for a fireplace, comprising:

- a burner panel (14) defining a top surface and a bottom surface;

- a bottom burner member (17) coupled to the burner panel (14);

wherein the burner panel (14) defines at least one aperture (20,48,63) to provide a gas/ air mixture to the top surface of the burner panel (14); and wherein the burner panel (14) comprises a bottom panel of a combustion chamber enclosure (note Figure 12).

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However, Shimek '237 does not disclose that the burner panel (14) comprises a compression molded material.

Davies teaches the use of a burner panel (27, Fig. 8) comprised of a compression molded material for the purpose of improving the overall production of the burner panel (note page 1, lines 8-13).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the burner panel (12, Fig. 2) of Shimek '743 such that the burner panel comprises a compression molded material such as taught by Davies in order to improve the overall production of the burner panel.

6. Claims 21-23, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimek '237 in view of Davies (U.K. Pat. 1033987, prior art cited by applicant in Paper No. 11).

Shimek '237 shows a method of forming a gas burner for use in prefabricated fireplace, comprising:

forming a molded burner panel (note element 14 in Figs. 12, and 15-18);
coupling a bottom burner member (61, Fig. 16) to the burner panel; and
forming at least one aperture in the burner panel (59, Fig. 16).

However, Shimek '237 does not disclose that the burner panel comprises a compression molded material.

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Davies teaches the use of a burner panel (27, Fig. 8) comprised of a compression molded material for the purpose of improving the overall production of the burner panel (note page 1, lines 8-13).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the burner panel (12, Fig. 2) of Shimek '743 such that the burner panel comprises a compression molded material such as taught by Davies in order to improve the overall production of the burner panel.

7. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shimek '743 in view of Davies (U.K. Pat. 1033987, prior art cited by applicant in Paper No. 11) as applied to claim 21 above, and further in view of Shimek '464.

Shimek '464 teaches the use of a burner panel (24C, Fig. 7) having at least one preformed log (col. 6, line 12) for the purpose of simulating a solid-fuel gas fire.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form a portion of the burner panel of Shimek '743 into at least one preformed log such as taught by Shimek '464 in order to simulate a solid-fuel gas fire.

8. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shimek '237 in view of Davies (U.K. Pat. 1033987, prior art cited by applicant in Paper No. 11).

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Shimek '237 discloses the invention substantially as claimed. In particular, Shimek' 237 shows in Figs. 3-16 a method of assembling a prefabricated fireplace, comprising:

providing a combustion chamber enclosure (29) having a burner panel (note element 14, Fig. 16) as a bottom panel of the combustion chamber enclosure (11); and providing an outer enclosure (28) surrounding the combustion chamber enclosure (29).

However, Shimek '237 does not disclose that the burner panel (14, Fig. 16) comprises a compression molded material.

Davies teaches the use of a burner panel (27, Fig. 8) formed of a compression molded material for the purpose of improving the overall production of the burner panel (page 1, lines 8-13).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the burner panel (14, Fig. 16) of Shimek '237 such that the burner panel comprises a compression molded material such as taught by Davies in order to improve the overall production of the burner panel.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Atemboski is cited to show a burner assembly for a gas-burning fireplace.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James C. Yeung whose telephone number is (703) 308-1047. The facsimile phone number for this Art Unit is (703) 308-7764.

JY

December 29, 2002


James C. Yeung
Primary Examiner